THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.P.Nos. 23671 OF 1996, 32955 OF 1997 &

C.C.Nos.656 OF 1997 &

990 of 1998

W.P.No.23671 of 1996

Between:

1. K.Rangakara Rao and 24 others … Petitioners

and

1.The Government of A.P. rep. by
Its Secretary, Panchayat Raj,
Secretariat, Hyderabad and 2 others … Respondents

Counsel for the petitioners : Sri M.Ravinder Nath Reddy
Counsel for respondents : G.P. for Panchayat Raj

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.P.Nos.23671 OF 1996, 32955 OF 1997 & C.C.Nos.656 OF 1997 &

990 of 1998

COMMON ORDER:

W.P.No.23671 of 1996 is filed seeking a direction to declare G.O.Ms.No.543, Panchayat Raj, Rural Development and Relief (MDL-II) Department, dated 03.07.1995, whereby the first respondent agreed to wind up the Parakala Seshavatharam Andhra Pradesh State Chamber of Panchayat Raj and directed the third respondent to take immediate further action in this regard, as an order without jurisdiction, arbitrary and illegal.

This Court, by order in WPMP.No.29218 of 1996 in W.P.No.23671 of 1996,

dated 13.11.1996, directed the respondents to pay the petitioners one month's salary. Alleging violation of this interim order, C.C.No.656 of 1997 was filed.

This Court, by order in WPMP.No.29219 of 1996 in W.P.No.23671 of 1997, dated 13.11.1996, granted stay of all further proceedings pursuant to G.O.Ms.No.543, dated 03.07.1995, for a period of two weeks. The interim order granted on 13.11.1996 was extended until further orders by order dated 05.12.1996. Alleging violation of the aforesaid orders, C.C.No.990 of 1998 was filed before this Court.

W.P.No.32955 of 1997 is filed questioning the action of the government in contemplating introduction of a voluntary retirement scheme for employees of the A.P. State Chamber of Panchayat Raj as illegal, arbitrary, opposed to public policy and violative of Articles 14, 19 and 21 of the Constitution of India.

Since all the four cases relate to the A.P. State Chamber of Panchayat Raj, they were heard together and are now being disposed of by a common order. Winding up of the A.P. State Chamber of Panchayat Raj is in issue in W.P.No.23671 of 1996. As the issues, raised in both the contempt cases and in W.P.No.32955 of 1997, relate to incidents which arose as a result of and consequent to the decision of the government to wind up the State Chamber of Panchayat Raj, W.P.No.23671 of 1996 needs to be considered first. The parties shall be hereinafter be referred to as they are arrayed in W.P.No.23671 of 1996.

Facts, to the extent necessary for this writ petition, are that the A.P. State Chamber of Panchayat Raj (hereinafter referred to as the 'Institution') was originally constituted by the government, in G.O.Ms.No.924, Planning and Local Administration (Panchayats-II) Department, dated 15.06.1961, for the purpose of strengthening and smooth functioning of panchayat raj bodies in the State of Andhra Pradesh. Consequent upon the institution being registered under the A.P. (Telangana Area) public societies registration Act, the bye-laws of the Institution were made by the first respondent retaining the power of constituting both the general body and the executive committee. In order to perform the duties and fulfill the objects, as prescribed in the constitution and bye-laws of the Institution, 47 employees were appointed, and the Institution purchased a building, with appurtenant site admeasuring 2,012.05 sq. yards,

from out of its funds. Subsequently, in the year 1988, the said building was demolished and a multi-storied complex consisting of two cellars and three floors, having a plinth area of about 36,000 sq. feet, was constructed. It is alleged that the third respondent desired to locate the office of the Commissionerate of Panchayat Raj, in the building of the Institution, and therefore forwarded his proposal dated 03.04.1995 to wind up the Institution. As a result, the first respondent issued G.O.Ms.No.543, dated 03.07.1995, approving the proposal, of the Commissioner, dated 03.04.1995, to wind up the institution. The first respondent, vide memo No.42117/Mdls.II/96-1, dated 07.01.1997, informed the Special Officer of the Institution that the Institution was constituted under the Societies Act, that employees of the Institution could not be treated as government employees and it was also not appropriate to take the surplus employees of the Institution into government service on deputation since the government itself had surplus staff.

It is contended that the impugned G.O. is contrary to the provisions of the Societies Registration Act as no general body meeting was convened for the said purpose, no resolution was passed in this regard and that the government was not empowered to approve the proposal of the commissioner for winding up of the Institution. It is also stated that pursuant to the said G.O., the Special Officer, vide proceedings in Ref.Lr.No.A1/245/95, dated 25.07.1995, had given various suggestions for winding up of the second respondent Institution and in so far as its employees were concerned, it was recommended that they may be absorbed in the Zilla Parishads and Mandal Parishads in the State, the State Election Commission and the State Finance Commission and that the building and appurtenant site belonging to the Institution be handed over to the Commissionerate of Panchayat Raj for locating its office. Apprehending that the first and third respondents would take over the assets of the Institution without absorbing the employees and without paying the salaries due to them, the petitioners have filed the present writ petition.

A counter affidavit is filed, by the then Special Officer (FAC) A.P. State Chamber of Panchayt Raj, wherein it is stated that the Institution was constituted in G.O.Ms.No.924, Planning & Local Admn., (Pts. II) Department, dated 15.06.1961 and subsequently registered as a society, that its very registration under the Societies Registration Act is illegal since the then

President had no authority to register the same as he himself was only a nominee of the government and it was only the government which had the power to register the Institution as a society. It is stated that initially the Institution had acquired a building with site admeasuring about 2,012 sq. yards and had subsequently in the year 1988, demolished the earlier building and constructed a multi-storied complex consisting of two cellars and three floors with contributions received from panchayat raj Institutions, through the government, for Rs.53.00 lakhs besides Rs.18.95 lakhs pertaining to the A.P. Panchayat Raj Finance Corporation. These amounts were permitted, by the government, to be utilized for construction of the said building. It is stated that no money was met from the State Chamber funds for construction of the building complex and as such, the Institution could not claim any right over the said building. The relevance of the State Chamber of Panchayat Raj is questioned and it is stated that the functions which it was discharging was required to be discharged by the panchayat raj Institutions, at appropriate levels, and that the functions of entrusting works to the Chamber of Panchayat Raj would be against decentralization and the provisions under the 73rd Amendment of the Constitution of India. It is stated that the government had taken the decision to wind up the State Chamber since it was not serving the purpose for which it was established and it was in the best interest of panchayat raj Institutions. It is stated that since the state chamber of panchayat raj was constituted by an executive order, in G.O.Ms.No.924, dated 15.06.1961, the government had the power to wind up the Institution, by way of an executive order in G.O.Ms.No.543, dated 03.07.1995. With regards payment of salaries to the employees, it is stated that the staff was paid salaries upto November, 1996 and that payment of salaries for the remaining months would be arranged as soon as the financial position of the Institution improved.

In their reply affidavit, petitioners would state that the respondents had recognized that the institution was registered as a Society, that the respondents had acted in accordance with the provisions of the Societies Registration Act and the bye-laws, that the first respondent had been periodically appointing special officers to the Society, that the government had granted permission, in G.O.Ms.No.348, dated 10.07.1985, for construction of a multi-storied complex and that Rs.16.00 lakhs was obtained by way of loans

and Rs.5.28 lakhs was from the Institution's own funds.

Sri M.Ravindranath Reddy, learned counsel for the petitioners, would submit that though the Institution had come into existence by an executive order, on 15.06.1961, it was subsequently registered as a society pursuant to the orders of the government and that its registration was not merely at the instance of the President of the Society. Learned counsel would submit that there is no factual foundation for the contention that registration of the society was by the president alone without the consent of the government. Learned counsel would refer to G.O.Ms.No.924, dated 15.06.1961, to contend that the composition of the Institution included the presidents of gram panchayats and other representatives and that the members were to elect among themselves the President, Vice-President and Secretary. Learned counsel would refer to the certificate of registration dated 29.08.1983 issued by the Registrar of Societies, whereby the name of the A.P.State Chamber of Panchayat Raj was changed to "Parakala Seshavatharam Andhra Pradesh State Chamber of Panchayat Raj". Learned counsel would refer to G.O.Ms.No.348, dated 10.07.1985, wherein the government took note of the fact that the "Parakala Seshavatharam Andhra Pradesh State Chamber of Panchayat Raj", had submitted proposals for construction of a multi-storied building (Panchayat Bhavan) for providing accommodation for its own office, location of printing press and for providing guest room facilities to the panchayat raj functionaries and also to provide accommodation to the heads of departments like Commissioner of Panchayat Raj, Chief Engineer (Panchayati Raj) and Superintending Engineer (Panchayati Raj) etc. The proposal of the Institution was examined and permission was accorded by the government to gram panchayats, panchayat samithis and zilla parishads to contribute towards the building fund at the rates indicated in the G.O. The government also accorded permission to the Institution to approach nationalised banks or cooperative Banks or any other financing agency for the loan assistance required, for completion of the building project, by mortgaging its immovable property, like the site and building, if found necessary. Learned counsel would submit that the very fact that in G.O.Ms.No.348, dated 10.07.1985, the government had accorded permission to the registered society (i.e., Parakala Seshavatharam Andhra Pradesh State Chamber of Panchayat Raj) to approach a nationalized bank for the required finance, was itself proof that the government was all along

aware that the Institution was a registered society.

While Sri M.Ravindranath Reddy, learned counsel for the petitioners, would submit that since the Institution
(second respondent), is a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350, the procedure prescribed for winding up of societies under the said Act would be required to be complied with, Sri J.Sudheer, special government pleader appearing for the Learned Advocate General would submit that since the very formation of the Institution was by an executive order under Article 162 of Constitution of India, it could be wound up in exercise of the very same executive power under Article 162 of the Constitution of India and that the procedure prescribed either under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, or under the Andhra Pradesh Societies Registration Act, 2001, had no application. Learned special government pleader would submit that registration of the Institution was without authority of law, null and void inasmuch as the then president of the society had surreptitiously, and without approval of the government, registered the society. Learned special government pleader would question the *locus standi* of the petitioners to challenge the impugned G.O. winding up the state chamber of panchayat raj.

Before the rival contentions are considered, it is necessary to examine the provisions of the A.P.
(Telangana Area) Public Societies Registration Act and the A.P. Societies Registration Act, 2001.

Section 6 of the Andhra Pradesh (Telangana Area) public societies registration act, 1350, provides as to how the property of a society should be vested, and thereunder the property, movable and immovable, belonging to a registered society, if not vested in the trustees, shall vest in the managing committee of the society, and in all judicial proceedings relating to such property, shall be deemed to be the property of the managing committee. Section 10 relates to dissolution of the society and adjustment of its affairs, and thereunder no registered society shall be dissolved unless
two-third of the members present at a meeting, convened for the purpose, so

determine, and at the same meeting the time when it is to be dissolved, and the method to be followed for the disposal and settlement of its property and debts shall also be determined. Proviso to Section 10 provides that if the government is a member of, or contributes or has contributed to, or is otherwise interested in, any society registered under the Act, such society shall not be dissolved without the consent of the government. Chapter II are the special provisions in respect of societies financed wholly or substantially from the funds of the government.

Section 16(2) defines “society” to mean a society either wholly or substantially financed from out of the funds of the government. Section 17 provides that the provisions of chapter II shall have effect notwithstanding anything contained in Chapter I of the Act or any other law for the time being in force. Section 18 relates to dissolution of the society and reads as under:

> **18. Dissolution of Society**:- (1) It shall be competent for the Government, by order and for reasons to be in writing, to dissolve a Society with effect from such date as may be specified in the order:
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> Provided that the Government shall before issuing an order dissolving a Society communicate to the Managing Committee of the Society the proposal to dissolve, fix a reasonable time for the Managing Committee for making a representation against the proposal and consider its representation, if any:
>
> Provided further that the Government may, after settling the liabilities, if any, of the dissolved Society, make over its properties, whether movable or immovable to any other Society having identical or similar objects and where there is no such Society, the properties shall vest in such officer or authority as may be specified by the Government in this behalf until a Society having identical or similar objects is formed whereafter the properties shall stand transferred to such Society.
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> (2) On the date fixed for the dissolution of a Society under sub-section(1) the registration of the Society shall stand cancelled and the Society shall cease to exist as a corporate body.

The Andhra Pradesh Societies Registration Act, 2001, (hereinafter referred to as Act 35 of 2001), is an Act to consolidate and amend the law relating to registration of societies situated in Andhra Pradesh promoting Art, Fine Arts, Charity, Crafts, Religion, Sports, Literature, Culture, Science,

Philosophy, Political Education or any public purpose and for matters connected therewith or incidental thereto. Section 2(b) of Act 35 of 2001 defines 'bye-laws' to mean bye-laws of a society; Section 2(c) defines 'Committee' to mean the executive committee appointed under Section 14 or any person or body of persons to whom the management of the affairs of a society is entrusted by its bye-laws; Section 2(g) defines 'Government' to mean the State Government of Andhra Pradesh; Section 2(h) defines 'Member' to mean a person, individual or body corporate, who/which, having been admitted to membership in any society has not resigned or ceased to be a member, or been removed from membership, in accordance with the bye-laws of that society; Section 2(i) defines 'Memorandum' to mean the memorandum of association of a society as originally framed or as altered, from time to time, in pursuance of the provisions of the Act; Section 2(n) defines 'Society' to mean a society registered or deemed to be registered under the Act. Section 7 relates to Registration of Societies; Section 8 to amendment of memorandum and bye-laws and Section 9 to filing of annual list. Chapter III relates to Management and Administration and under sub-section (1) of section 10, notice of the location of the registered office of society is required to be intimated to the Registrar; Section 11 provides for Register of Members; Section 12 provides for Accounts and Records; and Section 13 provides for Inspection of Register of Members of a Society; Section 14 relates to Committees of the Society. Under

sub-section (1) of section 14, every society shall elect a Committee, consisting of not less than three members of the society, by a resolution passed by a majority of the members present and entitled to vote at an annual general body meeting of the society held under Section 20; Section 18 provides that the society shall be a body corporate with perpetual succession and a common seal entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the furtherance of the aim for which it was constituted; Section 20 relates to meetings and under Sub-section (1) thereunder, the bye-laws of the Society shall specify the frequency and the manner in which the meetings of the committee and the general body shall be held, so however that the Committee shall meet atleast once in every three months and the general body shall meet atleast once in a year. Chapter IV relates to Disputes, Dissolution

and Winding up. Section 23 relates to disputes regarding management. Section 24 relates to dissolution of society and adjustment of its affairs and Section 25 relates to the property of the dissolved society.

Sections 24 and 25 of the Act read as under:

> 24. Dissolution of Society and adjustment of its affairs:- (1) A society may, by passing a special resolution, determine that it shall be dissolved and thereupon, with prior intimation to the Registrar, it shall be dissolved at the time specified in the resolution and all the necessary steps shall be taken for the disposal and settlement of the property of the society, and its claims and liabilities according to the bye-laws, if any, of the society, and if there are no bye-laws to this effect in the manner as the General Body may find it expedient:
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> Provided that in the event of any dispute arising among the members of the Committee or the members of the society, the adjustment of its affairs shall be referred to the Court and the Court shall make such order in the matter including appointment of liquidator as it deems fit.
>
> Provided further that if the Central Government or any State Government is a member of, or a contributory to any society registered under this Act, such society shall not be dissolved without the consent of the Government concerned.
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> (2) A society dissolved under this section shall file with the Registrar a full report showing as to how the property has been disposed of.
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> 25. Property of dissolved society: - If upon the dissolution of any society, there remains, after the satisfaction of all its debts and liabilities, any property, the same shall not be delivered to or distributed among the members of the said society or any of them, but shall be delivered to some other society, with a similar objective to be named by a special resolution, or in default thereof, by the court:
>
> 1. Provided that this section shall not apply to any society which is founded or established by the contribution of shareholders in the nature of a Company.

Section 32 relates to Repeals and Savings. Sub-section (1) thereof provides that the Societies Registration Act, 1860 (Central Act 21 of 1860), in its application to the Andhra area of the State of Andhra Pradesh, and the

Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350F shall be repealed. Section 32(2), however, provides that notwithstanding such repeal, anything done or any action taken under the said Acts, (including any order, rule, form, regulation, certificate or bye-laws), in exercise of any power conferred by or under the said Acts shall be deemed to have been done or taken in exercise of the powers conferred by or under Act 35 of 2001 as if Act 35 of 2001 was in force on the date on which such a thing was done or action taken.

It is clear from Section 24(1) of Act 35 of 2001 that a society can be dissolved only by passing a special resolution by the general body with prior intimation to the Registrar and that it shall be dissolved at the time specified. Proviso to
sub-section (1) provides that if the central government or any state government is a member of, or a contributory to any society registered under the Act, such society shall not be dissolved without the consent of the government. Under sub-section (2) of Section 24, a society dissolved under the section shall file with the Registrar a full report showing as to how the property has been disposed of. Section 24 makes it clear that the society can only be dissolved on a special resolution being passed by the members and in case, either the central or state government is a member of, or a contributory to any society, dissolution of the society is permissible only after consent is obtained from the government in this regard.

Sri M.Ravindranath Reddy, learned counsel for the petitioners, would also rely on the constitution and bye-laws of “Parakala Seshavatharam Andhra Pradesh State Chamber of Panchayat Raj,” (the Insitution). Under the head “Introduction”, it is stated that the constitution and bye-laws of the Andhra Pradesh State Chamber of Panchayat Raj was evolved by the executive committee at its meeting held on 24.03.1963 and that the government of Andhra Pradesh had communicated their consent to the constitution and the bye-laws of the society earlier that year i.e., 1963. Chapter V of the bye-laws relates to the executive committee and under clause (a) thereof, the executive committee shall be constituted with a president and 10 members to be nominated by the government. Chapter VI of the bye-laws relates to Powers and Functions of the

executive committee and under clause [vii] the executive committee shall have the power to create such of those posts in the office of the state chamber of panchayat raj which are conducive for smooth and efficient functioning of the Head Office. It is this clause VI [vii], which was amended, by government memo dated 21.09.1981, whereby it was specified that no posts in the A.P. State Chamber of Panchayat Raj shall be created by the president or executive committee without prior approval of the government. Chapter X relates to duties of office bearers and functions of the president and under clause (a)[xi] thereof, the president has been conferred disciplinary control over all the staff of the office of the State Chamber of Panchayat Raj and under clause [xvi], all investments and fixed deposits are required to be in the name of the president of the state chamber of Panchayati Raj. Bye-law XII relates to the rules for payment of salaries and allowances of the staff employed in the office of the State Chamber of Panchayat Raj and clause (ii) thereunder, provides that the rates as prevalent in government departments, for like cadres, shall be applicable to the staff working in the office of the state chamber of Panchayat Raj. The government, in Memo No.330/Sam.I/81-1, dated 21.09.1981, (enclosed as Annexure-I to the said bye-laws), issued an amendment to the constitution and bye-laws of the State Chamber of Panchayat Raj and in Bye-law No.1 for the words “The State Chamber of Panchayat Raj” the words “Parakala Seshavatharam State Chamber of Panchayat Raj” was directed to be substituted. The certificate of registration given by the Registrar on 29.08.1983 is the registration of the society with the change of name, as amended by the government, in Memo No.330/Sam.I/81-1, dated 21.09.1981. Annexure II of the constitution and bye-laws of the Institution contains a copy of the government Memo dated 20.07.1988, whereby bye-law VI [vii] of the Institution was substituted. The amended bye-law VI [vii] provided that no post in the “Parakala Seshavatharam Andhra Pradesh State Chamber of Panchayat Raj” shall be created by the president or the executive committee without prior approval of the government. Among the annexures, to the Constitution& Bye-laws of the institution, is a copy of the government memo dated 14.08.1969, whereby Rule IV [b] and V[b] of the constitution and business rules of the Andhra Pradesh State Chamber of Panchayat Raj was amended. Also enclosed, along with the Constitution and the bye-laws, is a copy of the memo dated 04.07.1969, which provides for amendment of the bye-laws of the society by incorporation of bye-

law XVI, conferring power on the government to remove the president, the elected secretary or any other office bearer of the State Chamber of Panchayat Raj and to appoint a Special Officer, for such period as they may consider it necessary, to exercise the powers of the president, the secretaries of the state chamber, the powers of the executive committee and of the general body of the chamber, vested in them under the constitution and the bye-laws.

The Introductory note to the Constitution and bye-laws of the Institution reveals that the Institution was registered as a society, under the A.P. (Telangana Area) Public Societies Registration Act, as early as in the year 1963. Both the petitioners and the respondents seem to have been under the misconception that the certificate issued by the Registrar on 29.08.1983 was the certificate of registration when, in fact, the said certificate was issued incorporating the change in the name of the institution from "State Chamber of Panchayat Raj" to "Parakala Seshavatharam State Chamber of Panchayat Raj". The Government Memos dated 21.09.1981, 20.07.1988, 14.08.1969 and 04.07.1969, enclosed as Annexures to the constitution and bye-laws of the institution, would clearly reveal the extent of involvement of the government, in periodically amending the bye-laws of the institution. Not only was the 1st respondent aware that the institution was registered as a society, it had also periodically conveyed its sanction/approval for amendment of the constitution and bye-laws of the Institution. In the light of these documents, the averment in the counter affidavit of the 1st respondent, that the then president of the State Chamber of Panchayat Raj had surreptitiously amended the bye-laws, without approval of the government, is clearly an afterthought and cannot be accepted. If there was any basis, in such a contention, the 1st respondent would not have periodically granted approval/sanction for amendment of the bye-laws of the institution. In any event, the first respondent could neither have been ignorant of the existence of the Institution as a society for more than three decades from 1963 nor would the 1st respondent have approved amendments to the bye-laws, periodically, if the institution had been surreptitiously registered as a society by its President, without approval from the government. Having all along recognized the existence of the Andhra Pradesh State Chamber of Panchayat Raj, as a society, and in effecting amendment to its bye-laws, from time to time, it is not now open to respondents 1 and 3 to contend that since the initial

formation of the Andhra Pradesh State Chamber of Panchayat Raj, was by an executive order in G.O.Ms.No.924, dated 15.06.1961, it continued to remain a body created by an executive order and that its registration as a society is required to be ignored. From the aforementioned facts it is clear that this contention, urged by the respondents, is without factual foundation and is therefore rejected.

Once it is accepted that the erstwhile Andhra Pradesh State Chamber of Panchayat Raj, renamed as "Parakala Seshavatharam State Chamber of Panchayat Raj" is a society registered under the A.P. (Telangana Area) Public Societies Registration Act, 1350 and is deemed to be a society under the Andhra Pradesh Societies Registration Act, 2001, it follows that the said society, a body corporate, under Section 18 of A.P. Act 35 of 2001, is a separate legal entity distinct from that of the government and that its dissolution can only be in accordance with the provisions of either the A.P.
(Telangana Area) Public Societies Registration Act or A.P. Act 35 of 2001.

Under Section 10 of the A.P. (Telangana Area) Public Societies Registration Act, no registered society shall be dissolved unless two-third of the members present at the meeting convened for the purpose, so determine. If the government is a member or a contributory or is interested, the society cannot be dissolved without its consent. The consent required to be obtained from the government under the proviso to section 10 can only be after two-third of the members present at the meeting, convened for the purpose, determine to dissolve the society. Even if Chapter II were held applicable, the power conferred under Section 18, could only have been exercised after putting the managing committee on notice, fixing a reasonable time for the managing committee to make a representation against the proposal and after considering the representation, if any. Section 18 requires the government to record reasons in writing for dissolving the society. The reasons for dissolution must be reflected in the order itself, and cannot be supplemented by way of a counter affidavit (COMMISSIONER OF POLICE, BOMBAY V. GORDHANDAS BHANJI and MOHINDR SINGH GILL V. THE CHIEF ELECTION COMMISSIONER, NEW DELHI). Further, dissolution of a society, under Section 24 of A.P. Act 35 of 2001, can only be by way of a special resolution to be passed by the said society. The State Chamber of Panchayat Raj could not have been dissolved

without complying with this statutory requirement. Even in case the state government is a member or a contributory to the said society, proviso to Section 24 would only require consent of the government to be obtained for dissolution of the society. In the light of Section 24, which empowers only the society, that too by a special resolution, to determine that it shall be dissolved, it was not open to the government, *suo motu,* to wind up the said society without the statutory requirements, under Section 24 of Act 35 of 2001, being complied with. It is not in dispute that these statutory provisions have not been complied with by the government before the impugned order in G.O.Ms.No.543, dated 03.07.1995, was passed.

It is well settled that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all. (GUJARAT ELECTRICITY BOARD V. GIRDHARLAL MOTILAL; STATE OF GUJARAT V. SHANTILAL MANGALDAS; HUKAM CHAND SHYAM LAL V. UNION OF INDIAN; COMMISSIONER of INCOME-TAX V. ARJUN M.H.GHOSWALA; and BABU VERGHESE V. BAR COUNCIL OF KERALA). It is also well settled that powers, conferred under a statute, can be validly exercised only within their true limits, and any act which is in excess of powers is *ultra vires*, without jurisdiction, void in law and deprived of legal effect.

While the initial constitution of the Andhra Pradesh State Chamber of Panchayat Raj was under an executive order in G.O.Ms.No.924, dated 15.06.1961, its subsequent registration under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350, has resulted in the Institution becoming a separate legal entity governed initially by the provisions of the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350, and subsequently the Andhra Pradesh Societies Registration Act, 2001. The entire action taken by the respondents, culminating in the impugned G.O., is on a misunderstanding of this legal position. The continued existence of the State Chamber of Panchayat Raj, a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350, and a deemed society under the Andhra Pradesh Societies Registration Act, 2001, could not have been put an end to without complying with the statutory requirements of either the A.P. (Telangana Area) Public Societies Registration Act or of A.P.

Act 35 of 2001.

Sri J.Sudeer, Special Government Pleader appearing on behalf of the learned Advocate General, would submit that since the petitioners, employees of the A.P state chamber of panchayat raj, are not members of the society, they do not have the *locus standi* to question the order of the government winding up the institution. I am afraid, I cannot agree.

In FERTILIZER CORPN. KAMAGAR UNION V. UNION OF INDIA, the union of workmen challenged the legality of sale of certain plant and equipment of the factory in which their members were employed. On an objection being raised to their *locus standi* to question the said sale, the Supreme Court held thus:

> "In the present case a worker, who, clearly, has an interest in the industry, brings this action regarding an alleged wrong doing by the Board of Management. Article 43A of the Constitution confers, in principle, partnership status to workers in industry and we cannot, therefore, be deterred by technical considerations of corporate personality to keep out those who seek to remedy wrongs committed in the management of public sector……"
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> "…….. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue, raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226."

In GHULAM QADIR V. SPECIAL TRIBUNAL**,** the Supreme Court held thus:

> **"**There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the

> High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases of dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

The petitioners, are employee of A.P state chamber of panchayat raj. Winding up of the chamber would result in their services being terminated, depriving them of being continued in service of the institution. The petitioners are neither wayfarers nor officious interveners, and have a concern deeper than that of a busybody. They are certainly interested, atleast to ensure that they continue to remain in employment, that the state chamber of panchayat raj is not wound up. Since the impugned order winding up the institution is in violation of the statutory provisions, I see no reason to non-suit the petitioners on the ground of *locus standi*.

C.C.Nos.656 of 1997 & 990 of 1998 have been filed alleging violation of interlocutory orders passed in W.P.No.23671 of 1996, which writ petition itself has now been allowed. It is neither appropriate nor necessary to examine, at this stage, as to whether there has been any willful and deliberate violation of the interlocutory orders passed by this court, pending disposal of W.P.No.23671 of 1996, for it is well settled that interlocutory orders passed during the pendency of the writ petition do not survive final adjudication of the writ petition itself. Both C.C.Nos.656 of 1997 and 990 of 1998 are accordingly dismissed.

Now W.P.No.32955 of 1997, wherein the action of respondents 1 to 4 in contemplating introduction of a voluntary retirement scheme to the employees of A.P. state chamber of panchayat raj, in which the petitioners are working, is questioned as being arbitrary, opposed to public policy and in violation of

Articles 14, 19 and 21 of the Constitution of India.

Facts, to the extent necessary for this writ petition, are that the petitioners are employees of the A.P. state chamber of panchayat raj. It is their case that, for all practical purposes, the A.P. state chamber of panchayat raj is part and parcel of the government and that the service conditions of the government would apply *mutatis mutandis* to employees of the state chamber of panchayat raj also. Details are given about the manner in which the A.P. state chamber of panchayat raj was functioning and the causes for its running into losses. The petitioners would contend, that in the month of July, 1997, the Commissioner of Panchayat Raj and the Special Officer had submitted a proposal to appoint employees of the state chamber on deputation to zilla parishads and that 30 employees had given their written option thereto. However, the proposal was not considered by the government. The petitioners would refer to the earlier deputation of employees of the A.P. state chamber of panchayat raj to the G.A.D.Secretariat, the legislative assembly, the state election commission, the A.P. Housing Board, Zilla Parishads etc. and refer to names of some of the employees of the A.P state chamber of panchayat raj, who are said to be still on deputation. Petitioners would contend that they could also to sent on deputation to other departments and instead of doing so, respondents 1 and 2 were hurriedly proceeding to implement the voluntary retirement scheme. The petitioners would submit that they had neither conveyed their willingness nor had they given their consent for the voluntary retirement scheme. It is their case that the voluntary retirement scheme can only be introduced when the institution is not in a position to recoup its losses or is not able to provide any employment. Petitioners would contend that since the voluntary retirement scheme can only be introduced to Industrial Undertakings or Sick Corporations, under which category the state chamber of panchayat raj does not fall, the voluntary retirement scheme could not be extended to the employees of the Institution. They would also contend that the voluntary retirement scheme should not have been proposed without the consent of or option from the employees, more so since W.P.No.23671 of 1996 was pending on the file of this Court, wherein the very decision of the government to wind up the institution was in question. The petitioners would refer to several reports, submitted by the previous Commissioners/Secretaries of the A.P. state

chamber of panchayat raj in respect of absorption of staff, and contend that introduction of a voluntary retirement scheme without the consent of or option exercised by the employees, was illegal, against public policy and in violation of Articles 14, 19 and 21 of the Constitution of India.

The voluntary retirement scheme, as its name indicates, is purely voluntary. Mere extension of the voluntary retirement scheme to an organization does not necessarily mean that each and every employee is required to accept it. Voluntary retirement, under the scheme, is at the option of the individual, and it is always open to the employee concerned either to accept or reject the offer of voluntary retirement under the scheme. It is not the case of the petitioners that they were compelled to accept the voluntary retirement scheme. On the other hand, it is the very introduction of the scheme to the A.P. state chamber of panchayat raj, which is questioned in the writ petition. The petitioners cannot be said to have suffered any legal injury or violation of their rights, by mere introduction of the voluntary retirement scheme. In the absence of violation of their fundamental, constitutional and legal rights, it is not open to the petitioners to question introduction of the voluntary retirement scheme to employees of the A.P. state chamber of panchayat raj. In so far as their deputation to other organizations or to the government is concerned, these are all matters for the government, in its wisdom, to decide. Matters, which are exclusively in the executive realm do not, normally, call for interference from this Court in proceedings under Article 226 of the Constitution of India. Reliance placed on the earlier reports, of Commissioners/Secretaries, to contend that the employees of the A.P. state chamber of panchayat raj should be absorbed into government service cannot also be accepted. As has already been held, in W.P.No.23671 of 1996, the A.P. state chamber of panchayat raj, a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act and a deemed society under the Andhra Pradesh Societies Registration Act, 2001, is a legal entity distinct from that of the government, and is not a department or wing of the government. Employees of A.P. state chamber of panchayat raj are not government employees and as such, cannot claim, as a matter of right, that they be deputed to other government departments or be absorbed in the services of the government. In any event, the questions raised in this writ petition would no longer survive in view of the order in W.P.No.23671 of 1996, setting aside the order of the government, in

G.O.Ms.No.543, dated 03.07.1995, granting approval for winding up of the A.P. state chamber of panchayat raj. All those employees, who have not accepted voluntary retirement under the scheme, continue to remain in the services of the A.P. state chamber of panchayat raj.

The impugned order of the government, in G.O.Ms.No.543 , Panchayat Raj, Rural development and Relief (MDL-II) Department, dated 03.07.1995, is *ultra vires,* without jurisdiction, and is therefore set aside. The 2nd respondent, State Chamber of Panchayat Raj, shall remain in existence till it is wound up/dissolved in accordance with law. W.P.No.23671 of 1996 is allowed. C.C.Nos.656 of 1997 and 990 of 1998 and W.P.No.32955 of 1997 are dismissed. There shall be no order as to costs.

Dt. 16.11.2005

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RAMESH RANGANATHAN, J

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